

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

JANE DOE §  
Plaintiff §  
VS. § CIVIL ACTION NO. 7:19-CV-00309  
§ (JURY REQUESTED)  
EDINBURG CONSOLIDATED §  
INDEPENDENT SCHOOL DISTRICT §  
Defendant §

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**EDINBURG CONSOLIDATED INDEPENDENT DISTRICT'S MOTION TO QUASH  
NOTICE OF INTENTION TO TAKE DEPOSITION BY WRITTEN QUESTIONS**

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TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT  
in the above-entitled and numbered cause, and files this its Motion to Quash Deposition by  
Written Questions as follows:

**I.**

1. EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT was recently  
served with a Notice of Intention to Take Deposition by Written Questions, a copy of which is  
attached hereto as Exhibit "A."

**II.**

2. The lawsuit upon which the Notice and Subpoena were issued involves a sexual assault  
and improper relationship between educator and student that occurred in March of 2013.  
Plaintiff JANE DOE filed suit on or about August 29, 2019 against Defendant EDINBURG  
CONSOLIDATED INDEPENDENT SCHOOL DISTRICT asserting a violation of her rights

under Title IX and the 14<sup>th</sup> Amendment to the U.S. Constitution for alleged injuries and damages.

### **III.**

3. The Notice filed by counsel for Plaintiff Jane Doe directs EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT to produce Edinburg C.I.S.D. Police Department's entire investigative file "pertaining to a sexual assault and improper relationship between an educator and student while a teacher at Harwell Middle School: Miguel Kohut Condes." The records requested do not involve Jane Doe or the educator Jane Doe asserts allegations against in the above captioned lawsuit. Said records requested are from 2013 and are currently the subject of a discovery dispute and Motion to Compel pending before the court. The Motion to Compel is set for hearing on June 25, 2020.

### **IV.**

4. EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT objects to the totality of the Notice and Subpoena on the grounds they are an attempt to circumvent the discovery process as well as the protections afforded to a party and a party's representatives, such as Defendant EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT with respect to objections that have already been asserted and are currently before the court for consideration via a Motion to Compel that was filed prior to the issuance of this Notice and Subpoena. Further, this Notice and Subpoena seeks EDINBURG C.I.S.D. Police Department to potentially divulge information and materials that should be protected from discovery in this suit. Defendant would respectfully submit that this is improper use of discovery, and the Notice should be quashed.

### **V.**

5. EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT objects to the Notice and Subpoena seeking an order quashing the production of such information, and/or for other appropriate relief, asserting the following objections:

- a. The information requested is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as it involves an incident from 2013, a different student, a middle school student, and a different employee;
- b. The Notice and Subpoena seek to invade the personal privacy rights of Defendant's student;
- c. Producing the requested documents would require Defendant to violate FERPA as the records contain information regarding a minor student of Defendant;
- d. Producing the requested information could violate section 261.201 of Texas Family Code as it includes documents created by the school district's police department regarding the investigation of suspected child abuse; and
- e. This issue is already pending before the court in the form of Motion to Compel.

## VI.

6. WHEREFORE, PREMISES CONSIDERED, EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT prays that the Court quash the Notice of Intention to Take Deposition by Written Questions to Edinburg C.I.S.D. Police Department. In the alternative, EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT requests that the Court conduct an *in-camera* inspection of the requested materials to determine what documents and information, if any, must be disclosed and/or produced. EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT further prays that, if any documents

are ordered produced and/or released, that an appropriate Protective Order be entered prior to production and/or release of said documents. EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT further prays for all other relief, both legal and equitable, to which it may be justly entitled.

Respectfully submitted,

**ESPARZA & GARZA, L.L.P.**  
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**Attorneys for Defendant**

**CERTIFICATE OF CONFERENCE**

By the undersigned signature below, Defendant's counsel confirms that he has conferred with counsel for Plaintiff and Plaintiff's counsel is opposed to this motion.

/s/ Eduardo G Garza  
Eduardo G Garza

**CERTIFICATE OF SERVICE**

I hereby certify that on June 18, 2020 pursuant to the Federal Rules of Civil Procedure, a true and correct copy of the above and foregoing document was served on each party to this action by Defendant's submission of this document to the U.S. District Court electronically to the DCECF system:

/s/ Eduardo G Garza  
Eduardo G Garza